

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 02 MADRID 002537

SIPDIS

DEPARTMENT FOR EUR/WE AND S/CT
DOJ FOR DONALD ASHLEY AND GREG SOFER

E.O. 12958: DECL: 06/27/2015

TAGS: [PTER](#) [PREL](#) [SP](#)

SUBJECT: BARAKAT YARKAS TERRORISM TRIAL: PROSECUTION BLAMES
USG FOR LACK OF ACCESS TO BINALSHIBH

REF: A. A) MADRID 2082

[B. B\) MADRID 2223](#)

Classified By: DCM Bob Manzanares; reasons 1.4 (B) and (D)

[1](#)1. (C) Summary. Embassy officials met with the Chief Prosecutor of Spain's National Court Eduardo Fungarino on July 1 to express concern regarding press reports quoting the lead prosecutor in the Barakat Yarkas terrorism trial complaining about the lack of access to USG detainee Ramzi Binalshibh. Emboffs reminded Fungarino that such statements were contrary to assurances by Fungarino and the prosecutor in question to a visiting USDOJ team in May that Binalshibh's testimony was not vital to their case and that Spanish officials would not criticize the lack of access to Binalshibh. Fungarino suggested that the prosecutor's statements had been misrepresented in the press stories and reaffirmed his position that the prosecution's request for access to Binalshibh was simply a technical means to introduce relevant testimony by Binalshibh from the U.S. 9/11 Commission Report. We hope, but cannot be certain, that this meeting with Fungarino will dissuade the prosecutor from blaming the USG should he fail to convict Barakat Yarkas of murder when the trial comes to a close in the next several weeks. End Summary.

[1](#)2. (C) In a June 25 story in the International Herald Tribune, Pedro Rubira, lead prosecutor in the ongoing trial of al-Qa'ida cell leader Imad Eddin Barakat Yarkas and 23 others, is quoted as criticizing the lack of access to USG detainee Ramzi Binalshibh. In the press story, Rubira allegedly claims that Binalshibh's testimony was crucial in order for the prosecution to be able to prove that Barakat Yarkas and co-defendant Driss Chebli were guilty of murder charges for having organized meetings in Spain for September 11 hijacker Mohamed Atta in July 2001. Trial observers say the three-judge panel in the case has seemed skeptical of the murder charges since the prosecution has not demonstrated convincingly that Barakat Yarkas or Chebli were present at the July 2001 meetings or knew of Atta's plans to carry out attacks in the U.S. Rubira is quoted by Herald Tribune saying that "an interview with Binalshibh would change everything" and turn the case in favor of the prosecution. He is also reported as adding that the USG had otherwise cooperated closely in the case, but that he "could not wait much longer (to interview Binalshibh)" and might have to release one of the suspects. Rubira said he had last requested access to Binalshibh three months ago, but had yet to receive an answer from the USG.

[1](#)3. (U) Rubira followed this on June 27 during his summation of the case, urging the judges to convict the defendants and sentence them to the maximum penalties in order to demonstrate that the fight against terrorism "does not require wars or detention centers," alluding to USG military actions and to the detention center in Guantanamo. According to Spanish daily "El Mundo," Rubira "defended the European model (in the fight against terrorism) compared to the U.S. model," and said what was needed were "trials like this which strengthen the rule of law." A June 28 editorial in El Mundo criticized Rubira for "politicizing" the Barakat Yarkas case in order to distract attention from the prosecution's lack of evidence to substantiate murder charges against Yarkas and Chebli.

[1](#)4. (C) Rubira's statements to the Herald Tribune directly contradict his assertion in mid-May to a visiting USDOJ team that Binalshibh's testimony was not crucial to his case and his assurances that he would not criticize the USG for not making Binalshibh available (REF A). Moreover, despite Rubira's claim to have requested access to Binalshibh three months ago, the Embassy is not aware of any such Mutual Legal Assistance (MLAT) request having been formally submitted by Spanish authorities.

[1](#)5. (C) Embassy legal adviser shared a copy of the Herald Tribune story with Rubira's supervisor and Chief Prosecutor for Spain's National Court Eduardo Fungarino. Fungarino had participated in REF A meeting during which Rubira had told DOJ and Embassy staff that he would submit a MLAT request for the USG to make Binalshibh available as a witness with the sole purpose of using that request to introduce Binalshibh's

statements taken from the U.S. 9/11 Commission Report. Fungarino expressed surprise that Rubira had spoken to the press and suggested that the reporter may have used earlier statements in publishing the June 25 story. He promised to investigate the issue with Rubira and meet with the Embassy again after doing so.

16. (C) Fungarino met with poloff and Embassy legal adviser on July 1 to provide a readout of his discussions with Rubira on this issue. Fungarino said Rubira acknowledged having spoken to the journalist, but insisted that he had only discussed the USG's good cooperation and his need to hear from the USG regarding access to Binalshibh before the trial ended in July. Fungarino asserted that Rubira had not told the journalist that access to Binalshibh constituted a vital element for the prosecution's case.

17. (C) Poloff and legal adviser told Fungarino that it was unfortunate that Rubira's discussion with the journalist had made it seem that the USG could be responsible for the failure of Rubira's case against Barakat Yarkas. It was especially frustrating for the USG since the Embassy and DOJ had discussed this issue at length with Rubira in May and had been assured both that Binalshibh's testimony was not vital to the Spanish case and that prosecutors would not blame the USG for lack of access to Binalshibh. This episode undermined the trust and confidence necessary for the success of the newly-launched Bilateral Counterterrorism Experts Working Group, which the USG sees as an important vehicle for deepening counterterrorism cooperation. Poloff also clarified that the USG had no record of a formal Spanish request under the MLAT for access to Binalshibh, nor did we recommend that such an MLAT request be made at such a late date in the trial. Fungarino said he understood how the USG might take away a negative message from the Herald Tribune story, but said the official GOS position remained that discussed with the USG team in May: access to Binalshibh would be desirable, but not critical to the success of the Barakat Yarkas prosecution.

//COMMENT//

18. (C) Our sense is that Fungarino was embarrassed by Rubira's interview, but felt obligated to support his subordinate. We hope, but cannot be sure, that this expression of the USG's displeasure with Rubira's statements will restrain Rubira from blaming the USG should the court absolve Barakat Yarkas of murder charges. At a minimum, Fungarino understands the sensitivity of this issue for the USG and our strong desire that Rubira avoid such unhelpful statements in the future.
AGUIRRE